



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/816,095   | 04/01/2004  | Dominic A. Cataldo   | BGT 2-007           | 9481             |
| 266  | 7590        | 08/28/2008           | EXAMINER            |                  |
| MUELLER AND SMITH, LPA<br>MUELLER-SMITH BUILDING<br>7700 RIVERS EDGE DRIVE<br>COLUMBUS, OH 43235 |             |                      | LEVY, NEIL S        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1615                |                  |
|  |             |                      | MAIL DATE           |                  |
|  |             |                      | 08/28/2008          | DELIVERY MODE    |
|  |             |                      |                     | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/816,095             | CATALDO ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | NEIL LEVY              | 1615                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 5/29/08.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12, 14, 15, 17, 19, 20, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12, 14, 15, 17, 19, 20, 39 and 40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

Claim1-12, 14, 15, 17, 19, 20, 39 and 40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over OHNO et al 5876738 in view of BEALL et al 5730996 and

KNUDSON, Jr 4849006

OHNO, of record, uses the instant nanoclays, montmorillonite,bentonite (column 2, bottom) to incorporate antifungals (column 2) in a liquid state (column 3, lines 60-65) as in the instant invention, and then incorporated into the instant polyolefin's, polyurethane forming the instant barrier for control of targeted living fungal species (column 7, lines 29-53). Intercalation with ammonia ion chemicals was not done.

BEALL (col 11, top) also utilizes the same pesticidal intercalated nano-clays, (col 10, lines 37-39) ammonium functionalized water-soluble polymers (col 11, lines 3-22; col 16, lines 6-8, 27-32) are acceptable intercalate polymers. Beall explains that intercalation by introduction of ammoniated compounds was well known(col. 1,2) , but exfoliation is enhanced with aqueous solutions of the intercalant/Pesticides. BEALL shows pesticides include not only the triademefon (col 19) fungicides of OHNO, but also the instantly claimed insecticides, cypermethrin, isofenphos, fenvalerate, permethrin, pyrethrins (pyrethrum) endosulfan and organophosphate type insecticdces (col 21). Although bifenthrin is unmentioned, it would be obvious that one in the art of insecticide use would be able to substitute any of the pyrethroids, given the variety of them disclosed herein.

Art Unit: 1615

The instant size and aspect ratio are seen as met (col 3, lines 8-55; col 8, lines 5-34) as the platelets of montmorillonite are those of the instant invention. BEALL uses mixtures of pesticides (claim 1 of Beall).

KNUDSON shows these ammonium organic intercalates (column 2) with a sustained release of active agent possible. The ammonium includes b and c (1-24, column 3, lines 28-62) inclusive of instant claim 19 ammonium salts. The clays are montimorillanite, of instant claim 9 and 8. Adding active agents is disclosed as known: the agent being in a solution (column 4, bottom) or otherwise liquid form (claim 1) as in the instant molten form.. Neither aqueous or organic solvent are required. Target pest control is possible by applying to crops or habitat (column 5, top).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the OHNO nano-clays modified as desired to increase stability, dispersibility, compatibility of ingredients, processing ease, reduced toxicity to handlers.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects, & stabilization of components.

Applicant has not provided any objective evidence of nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

***Response to Arguments***

Applicant's arguments filed 5/29/08 have been fully considered but they are not persuasive, except as to the withdrawal of rejections under 112 & 102..

The invention as claimed is seen as obvious, whether liquid or solid pesticides are used, they must be in a molten(liquid) form.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615

\*\*\*